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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,308	09/08/2003	Renato Belz	21933-US	9743
22829 7590 08/20/2008 Roche Molecular Systems, Inc. Patent Law Department 4300 Hacienda Drive Pleasanton, CA 94588				
EXAMINER				
REDDING, DAVID A				
ART UNIT		PAPER NUMBER		
3723				
MAIL DATE		DELIVERY MODE		
08/20/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/657,308

Applicant(s)

BELZ ET AL.

Examiner

/David A. Redding/

Art Unit

3723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/55/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over USP 5,720,406 (Fassbind et al.) in view of USP 6,776,964 ('964) and USP 4,226,333 (Percarpio).

The '406 patent discloses a plurality of reaction containers (91) with corresponding plurality of closures (95) which is placed into a device for performing thermal cycling (see description of figure 1 and col.1, lines 20-23). Figure 1 shows a ring of reaction containers (91) and a ring of closures (95), each of which are two-dimensional (X and Y axis). The reaction vessels are connected to one another via a flexible connector (94) and the closures connected to an adjacent closure via a flexible connector (96) (col.3, lines 59-61; col.4, lines 1-5). The connectors (96) do not extend in a direct line between the containers but extend transversely to the connecting line between the closure. The patent also discloses that the device is equipped with a handle (99,102) which has a surface upon which a bar code label can be placed (col.4, lines 10-11). Further, the apex of the connector (96) is considered to read on the limitations of claim 3.

In Fassbind et al. the closures have rounded tops, not recesses. The '964 patent shows a closure assembly comprising caps which do have cylindrical recesses (figure 4). Accordingly, it would have been obvious to one skilled in the art to provide the

closures in Fassbind et al. with recesses as shown in the '964 patent as a matter of choice of design.

The Fassbind et al. and '964 patents are silent as to providing a tool with having a handle with pin for insertion into the recess of the cap for seating the cap. Figures 2 and 3 in the Percarpio patent shows the use of a tool (34) as claimed for the same function as claimed (see col. 4, lines 40-56). Accordingly, it would have been obvious to one skilled in the art to provide the tool (34) in Percarpio with the closure in the '964 patent with the containers in Fassbind et al. in view of the tools known use.

Response to Arguments

The arguments are addressed in the order in which they appear in applicant's response filed 4/30/08.

Applicant argues that Fassbind does not teach or suggest a flexible connecting member having a cross part which extends transversely to the closure elements.

The examiner disagrees with this argument. Figure 1 in Fassbind shows that the closures are connected to one another via a flexible element which is not a direct connection but does extend transversely between the closures. Each of these elements are constructed to allow the distances between the vessels and closures to change (col.3, lines 59-61; col.4, lines 1-5).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /David A. Redding/ whose telephone number is 571-272-1276. The examiner can normally be reached on Mon.-Fri. 6:00 - 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David A Redding/
Primary Examiner
Art Unit 3723

DAR